

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 26, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 12IID-168

HAWAII

Assessment of \$500 Fine Against Applicants for Seawall Encroachment; Grant of Term, Non-Exclusive Easement to CH2, Stephen T. L. Hurwitz, and Robert P. Chancer, for Seawall Encroachment Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.

APPLICANT(S):

CH2, a Hawaii General Partnership, as Tenant in Severalty, as to an undivided 85.24% interest;
Stephen T. L. Hurwitz, a married man, as tenant in severalty, as to an undivided 7.38% interest; and
Robert P. Chancer, a married man, as tenant in severalty, as to an undivided 7.38% interest.

LEGAL REFERENCE:

Section 171-13, 53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land, a beach reserve, located seaward of TMK: (3) 6-9-004:005, Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: (3) 6-9-001: portion of 002, as shown on the attached map labeled Exhibit A.

AREA:

539 square feet, more or less.

ZONING:

State Land Use District: Urban/ Conservation
County of Hawaii CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ___ NO x

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as **Exhibit B**.

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

By letter dated December 13, 2012, relating to File Number Encroachment: A-13-11, OCCL indicated that it would not be asking for an after-the-fact Conservation District Use Application since the seawall has been in existence since the late 1960s or earlier.

However, OCCL may reconsider this finding should it be determined that the seawall was built without permits, within the Conservation District after 1964.

DCCA VERIFICATION:

PERMITTEE(s):

HC2:	Place of business registration confirmed:	YES
	Registered business name confirmed:	YES
	Good standing confirmed:	YES

Stephen T. L. Hurwitz, as an individual, is not required to register with DCCA.
Robert P. Chancer, as an individual, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine one-time payment;
- 3) Obtain Site Plan Approval from OCCL; and
- 4) Pay for the publication of notice required under HRS Section 171-16(d), if applicable.

REMARKS:

By memorandum dated November 29, 2012, Mr. Roy A. Vitousek III, of Cades Schutte LLP, on behalf of CH2, Stephen T. L. Hurwitz, and Robert P. Chancer, requested a grant of easement for seawall encroachment purposes at Lalamilo, South Kohala, Hawaii, TMK: (3) 6-9-001: portion of 002. While processing a building permit for proposed renovations on their Puako property, the County required an updated shoreline certificate. The survey for the shoreline certification revealed that there were seawall encroachments into an abutting State-owned Beach Reserve, identified as Tax map Key: (3) 6-9-001:002. The seawall encroachment consists of approximately 539 square feet. Applicants do not know when the wall was constructed, but are of the understanding that the wall was present in its current condition in August 1968.

By letter dated December 13, 2012, relating to File Number Encroachment: A-13-11, OCCL indicated that it would not be asking for an after-the-fact Conservation District Use Application since the seawall has been in existence since the late 1960s or earlier. However, OCCL may reconsider this finding should it be determined that the seawall was built without permits, within the Conservation District after 1964.

Based on the information above, and pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments,

staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

CH2, Stephen T. L. Hurwitz, and Robert P. Chancer have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies and interest groups were solicited for comments. To date, the only respondents were the County Planning Department and the Office of Conservation and Coastal Lands, which had no objections to the request.

AGENCIES	COMMENTS
County of Hawaii:	
Planning Department	See comments
Public Works	No response
State of Hawaii:	
DLNR-Aquatic Resources	No response
DLNR - DOFAW	No response
DLNR - Na Ala Hele	No response
DLNR - Historic Preservation	No response
DLNR - OCCL	See comments
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response

The County Planning Department’s response was that it had reviewed the request for a grant of easement for a seawall encroachment into the adjacent State-owned Government Beach Reserve. Pursuant to Planning Department Rule No. 11-7(a)(6), “Structures which were completed by or activities which commenced prior to June 22, 1970” can be allowed within the shoreline setback area provided written clearance is secured within the Shoreline Setback area. It had no objections to the request and provided comments that, “With the receipt of the two signed declarations submitted with the request, our office concurs that the wall was built prior to June 22, 1970. In addition, we hereby provide clearance to allow the subject wall within the shoreline setback area.”

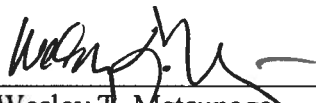
RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 6-9-004:005, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to CH2, Stephen T. L. Hurwitz, and Robert P. Chancer covering the subject area for seawall

encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 6-9-004:005, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



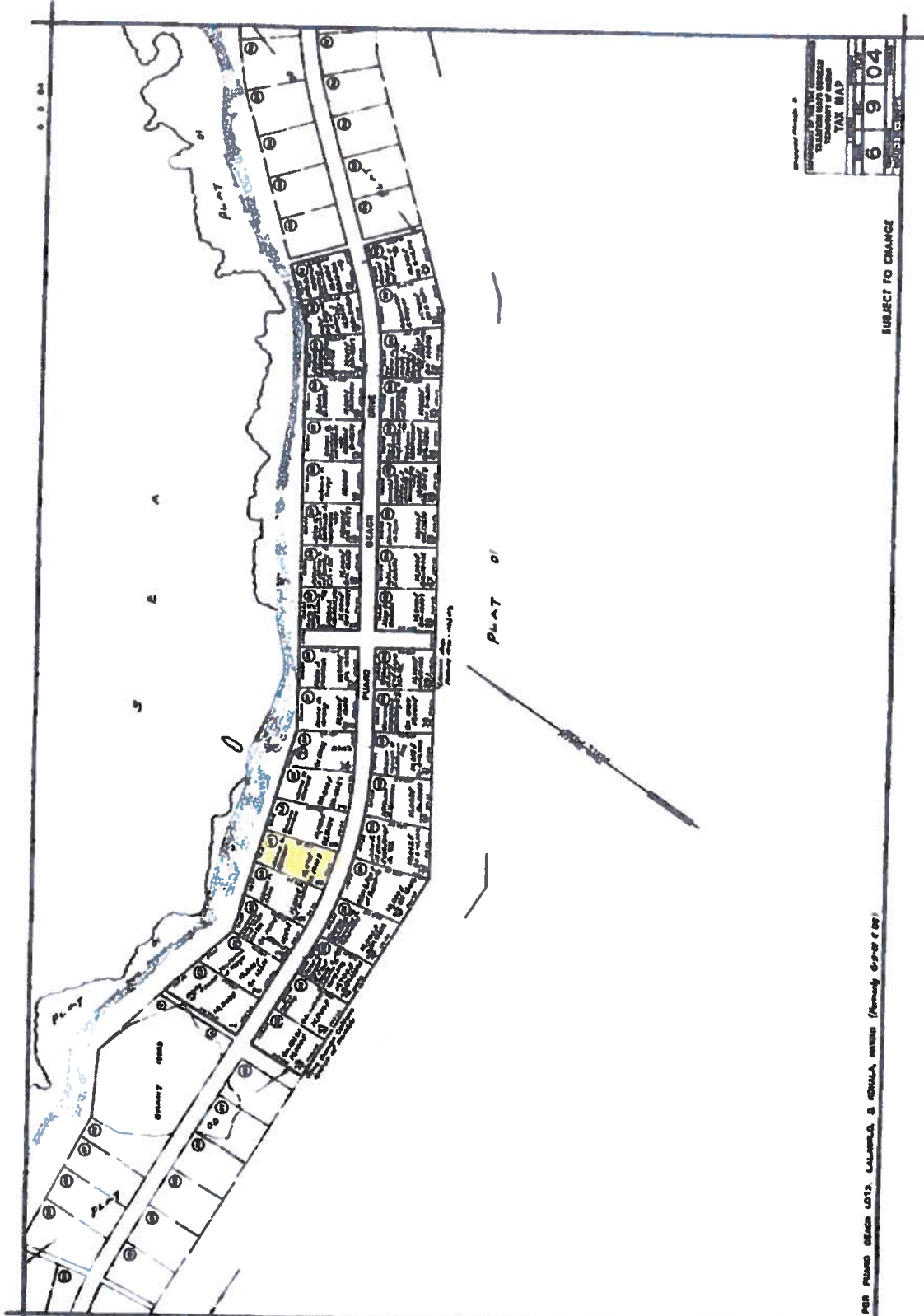
Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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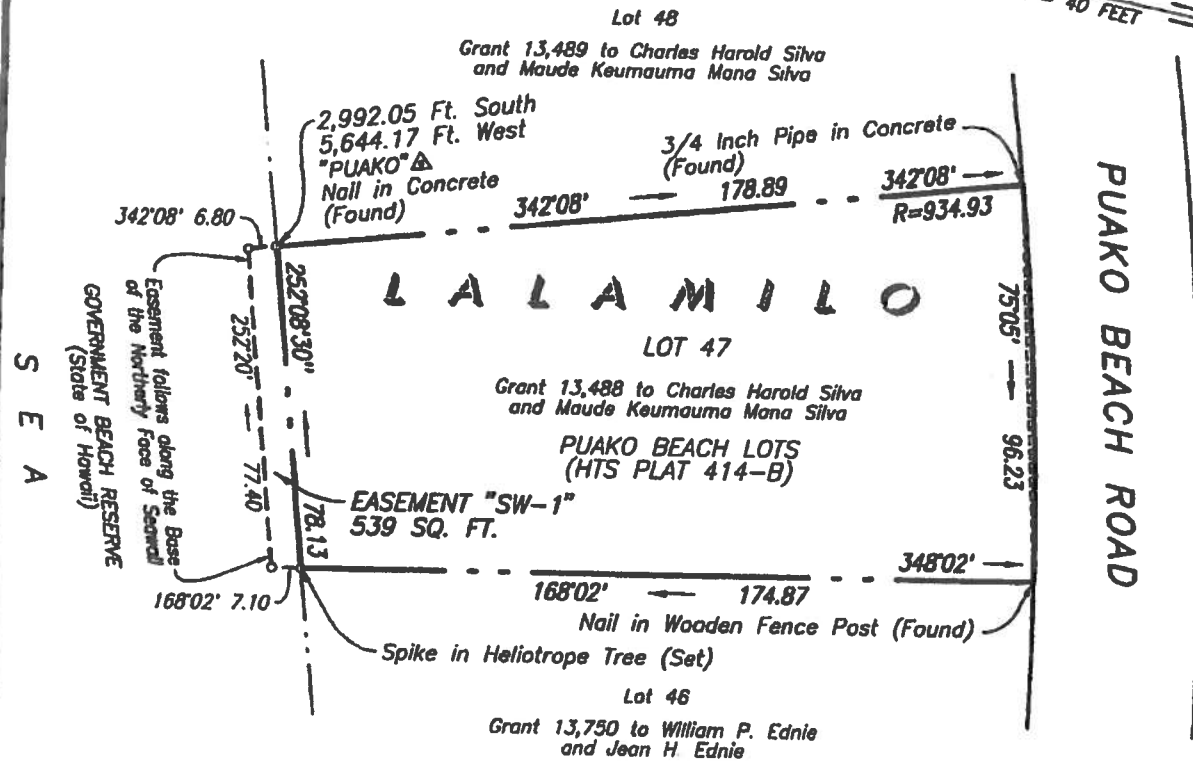


FOR PLANS SEE 0173 LALAMBA, S. ORILLA, 1911 (formerly 0173 & 0174)

SUBJECT TO CHANGE

EXHIBIT A

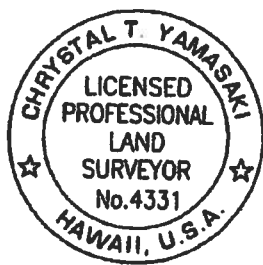
TRUE NORTH
SCALE: 1 INCH = 40 FEET



**PERPETUAL NON-EXCLUSIVE
SEAWALL EASEMENT
EASEMENT "SW-1"**

**At Lalamilo, Waimea, South Kohala
Island and County of Hawaii, State of Hawaii**

WES THOMAS ASSOCIATES
Land Surveyors
This work was prepared by me or
under my direct supervision.



Chrystal Thomas Yamasaki
CHRYSTAL THOMAS YAMASAKI
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS-4331
Expiration Date: April 2014

TAX MAP KEY: 6-9-004:005 (3RD DIVISION)

PROJECT NO: 17249.4
DATE: MAY 31, 2012

May 31, 2012 p:\17000-17499\17249.4\dgn\172494ea.dgn



WES THOMAS ASSOCIATES
-- Land Surveyors --
75-5749 Koloa Street
Kailua-Kona, Hawaii 96740-1817
TEL (808) 329-2353 FAX (808) 329-5334 EMAIL surveys@wtchawaii.com

EXHIBIT A



View from subject property, TMK: (3) 6-9-004: 005, looking to the southeast



View from subject property, TMK: (3) 6-9-004: 005, looking to the northwest

See Shoreline Assessment (Exhibit 7) for additional photographs of the subject area.

EXHIBIT A

NEIL ABERCROMBIR
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 961-9590
FAX: (808) 961-9590

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title: Grant of Term, Non-Exclusive Easement to CH2, Stephen T. Hurwitz, and Robert P. Chancer, for Seawall Encroachment Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.

Project / Reference No.: PSF No.: 12HD-168

Project Location: Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.

Project Description: Grant of Term, Non-Exclusive Seawall Encroachment Easement.

Chap. 343 Trigger(s): Use of State land.

Exemption Class No. and Description: In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:
Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." and
Exemption Class No. 4, which states, "Minor alterations in the conditions of land, water or vegetation."

Exemption Item Description from Agency Exemption List: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that

EXHIBIT B

previously existing.

Minor alterations in the conditions of land, water or vegetation.

Recommendation:

The issuance of a term, non-exclusive easement for seawall encroachment over a portion the land in itself will probably have minimal or no significant effect on the environment. The existing seawall was constructed in the 1960s. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, assessment.



William J. Aila, Jr., Chairperson

N

Date

7/3/13

EXHIBIT B